

(2010) 10 CAL CK 0018

Calcutta High Court

Case No: A.P.O. No. 423 of 2007, A.P.O.T. No. 526 of 2007, G.A. No. 3194 of 2007 and A.P. No. 196 of 2003

Union of India (UOI)

APPELLANT

Vs

Pam Developments (P) Ltd.

RESPONDENT

Date of Decision: Oct. 5, 2010

Acts Referred:

- Arbitration Act, 1940 - Section 11, 12, 30, 33, 5
- Constitution of India, 1950 - Article 142

Citation: (2011) 1 CHN 618

Hon'ble Judges: Pinaki Chandra Ghose, J; Harish Tandon, J

Bench: Division Bench

Advocate: R.N. Das, D.N. Sharma and D.K. Singh, for the Appellant; Promit Roy and Yasser Md. Araffat, for the Respondent

Final Decision: Dismissed

Judgement

Pinaki Chandra Ghose, J.

This appeal is directed against a judgment and order dated 11th September, 2007 passed by the Hon'ble First Court dismissing the application filed by the Appellant herein under sections 30 and 33 of the Arbitration Act, 1940 (hereinafter referred to as the said Act) for setting aside of an award published by the learned Arbitrator dated 20th May, 2003 with costs.

2. The facts of the case briefly are as follows:

On December 9, 1991 the Appellant issued a Notice inviting Tender for construction of a Gymnasium at the Garden Reach Office of the Appellant. The proposed tender value of the said tender was Rs. 61.40 lakhs. The Respondent duly filed a tender bid which was opened on 19th December, 1991 along with other tenders and on 17th August, 1992 the letter of acceptance was issued in favour of the Respondent by the Appellant, since the Respondent was the lowest tenderer. The initial date of

completion of the work was 16th April, 1993 under the said contract.

3. On 17th January, 1994 a consolidated letter of claim was submitted by the Respondent to the Petitioner and the Respondent had lodged a purported claim of Rs. 31,18,369/- and requested the Petitioner to refer the disputes to arbitration in terms of clause 64 of the General Conditions of Contracts 1974. The Appellant denied such request of the Respondent by its letter dated 17th January, 1994. Application was filed by the Respondent for appointment of an arbitrator before the learned First Assistant District Judge at Howrah whereby an order was passed on 29th November, 1994 directing the Appellant to appoint an Arbitrator to decide the disputes within one month.

4. On 12th January, 1995 the General Manager, Railways appointed two departmental arbitrators and the said Joint Arbitrators were requested to appoint an Umpire to refer the case in respect of any difference of opinion between the said Joint Arbitrators. Request was made by a letter dated 19th April, 1995 to the Joint Arbitrators by the Respondent to appoint an Umpire within seven days from the receipt of the letter. No steps were taken, hence, application was filed under sections 5, 8, 11 and 12 of the said Act for removal of the said Joint Arbitrators and for appointment of new Arbitrator. Subsequently, on 7th February, 1996 one of the Joint Arbitrators, Shri Rajat Mitra, Chief Planning & Design Engineer/SER/Garden Reach/ Calcutta was appointed as an Umpire. Since Joint Arbitrators did not enter upon reference, the application which was filed before the learned Civil Judge Senior Division was transferred before the High Court and the matter was taken up by the Court. Ultimately, on 13th March, 2000 a retired Judge of this Court Mr. Justice Samir Kumar Mukherjee was appointed as an Umpire. By an order dated 30th November, 2000 the High Court passed an order directing that the Joint Arbitrators had become functus officio and the learned Umpire appointed in the matter was directed to act as an Arbitrator to proceed afresh and to adjudicate the disputes between the parties. It appears that on 20th May, 2003 an Award was passed by the Arbitrator in the matter.

5. The points which have been urged before us that the Award is void ab initio and is a nullity since the said Arbitrator had no jurisdiction to deal with the said matter. Therefore, it is submitted that the said Arbitrator functioned as quorum non-judice. In support of his contention Mr. R.N. Das, learned Senior Advocate, appearing on behalf of the Union of India relied on the decisions reported in 2000 (2) ArbLR 2 (SC) (A.Mohammed Yunus v. Food Corporation of India) and in the case of Union of India v. Sohanlal Puglia, reported in 2003 (3) ArbLR 557 and in 2004 (10) SCO 504 (Union of India v. M. P. Gupta).

6. Mr. Das further contended before us that the impugned award is a nullity and passed by the learned Arbitrator without jurisdiction. Therefore, it should be challenged at any stage and reliance has been placed on the following decisions:

1. [Kiran Singh and Others Vs. Chaman Paswan and Others,](#)

2. [Sunder Dass Vs. Ram Prakash,](#)

7. His third contention was that the impugned award is also bad as the claims are not maintainable in view of clauses 17(3) and 16(2) of the General Conditions of Contract. He also relied on the following decisions in support of his submission.

1. AIR 2006 SC 343 (Andhra Pradesh High Court) Chief Single and Telecommunication Engineer (Project) South Central Railway v. Hytronics Enterprises);

2. AIR 2006 (SC) 386 (Ram Nath International Construction (P) Ltd. v. Union of India paras 4 to 15.

8. He also drew our attention to Clause 17(3) which is set out hereunder:

Extension of time on Railway Account. In the event of my failure or delay by the Railway to hand over to the contractor possession of the land necessary for the execution of the works or to give the necessary notice to commence the works or to provide the necessary drawings or instructions or any other delay caused by the Railway due to other cause whatsoever, then such failure or delay shall in no way affect or vitiate the contract or alter the character thereof or entitle the contractor to damages or compensation therefore but in any such case, the Railway may grant such extension or extensions of the completion date as may be considered reasonable.

9. Accordingly, he submitted that the claim Nos. 2, 7, 8, 9, 10, 11 and 12 could not have been taken up by the learned Arbitrator.

10. He further submitted that the counter-claim of the railways has been rejected by the learned Arbitrator on the ground that no such claim was made prior to the reference to arbitration and as such no dispute could be raised.

11. Mr. Das, the learned Counsel drew our attention to Clause 64(3)(a)(iii) which has the conditions of contract, which reads as follows:

It is a term of this contract that no person other than a gazetted railway officer, should act as an Arbitrator/Umpire and if for any reason, that is not possible, the matter is not to be referred to Arbitration at all.

12. On the contrary, Mr. Promit Roy, learned Advocate appearing on behalf of the Respondent contended that the Appellant has not raised the said issue at the threshold and/or at the first possible opportunity that the learned Arbitrator, since is not a Railway Gazetted Officer in terms of clause 64 (3)(a)(iii), cannot proceed with the arbitration.

13. On the contrary, it would be evident from the facts that the Appellant duly accepted the order of appointment of the learned Arbitrator and duly filed a

counter-claim before the Umpire without challenging the jurisdiction. The Appellant duly participated in the said proceedings, presented its case before the Umpire. After long participation in the said proceedings and when found that the award can go against them, it has challenged the jurisdiction of the Umpire and thereafter absented before the Umpire. This issue was taken up for consideration and was held against the Appellant both by the Hon"ble Single Judge in A.P. No. 137 of 2002 reported in [Union of India \(UOI\) Vs. Pam Developments Pvt. Ltd.,](#) and affirmed by the Hon"ble Appeal Court in A.P.O.T. No. 643 of 2003 (Union of India v. Pam Development (P) Ltd.) reported in [Union of India \(UOI\) Vs. Pam Development Pvt. Ltd.,](#). The said case was under 1996 Act. Thereafter, on the similar factual matrix under 1940 Act a challenge was thrown taking the case of jurisdiction in view of the fact that the award was made and published by an Umpire who was not a Gazetted Officer. That challenge was negated by another Hon"ble Division Bench of this Court between the same parties in A.P.O.T. No. 438 of 2005, although, the gist of the order has been reproduced by the Appellant in pages 211-234. The fact that the judgment of the Hon"ble First Court was set aside and the appeal was allowed and pursuant thereto the entire payment was made in respect of the award which was the subject-matter of A.P.O.T. No. 438 of 2005 has not been disclosed in the Paper Book filed by the Appellant.

14. Mr. Roy further contended that the decision in the matter cited before this Court the Appellants therein have challenged the order appointing Arbitrator at the threshold which is not the fact in the instant case and accordingly he submitted that the case of A. Mohammed Yunus v. Food Corporation of India reported in 2000 (2) Arb. LR 2 SC is not an authority which supports the case of the Appellant when the Appellants have accepted the order of appointment of the Umpire has filed counter-claim before the Umpire and proceeded on the basis that the Umpire has jurisdiction and thereafter has abandoned the same. Therefore, he submitted that the said decision cannot be a help to the Appellant.

15. He relied upon the decision in the case of Union of India v. Krishna Kumar (supra), the challenge as to the jurisdiction of the Arbitrator was made at the first possible instance even before filing the statement of claim. In the instant case no such immediate challenge was thrown by the Appellant.

16. He relied upon the decisions of the Hon"ble Supreme Court in the case of Prasun Roy (supra); in the case of [Arbn. Jupiter General Insce. Co. Ltd. Vs. Corporation of Calcutta \(with Award\)](#), ; in the case of [Tarapore and Company Vs. Cochin Shipyard Ltd., Cochin and Another](#), ; in the case of Nandyal Cooperative v. Chief Engineer, reported in : AIR 1994 SC 2381 and submitted that the Appellant has waived its right to challenge the jurisdiction of the learned Arbitrator in the facts and circumstances of this case and has estopped from raising any challenge with regard to the jurisdiction to the learned Umpire.

17. He further contended that no appeal was preferred challenging the appointment of the learned Arbitrator by the High Court at any point of time. He further submitted that in the case of Union of India v. Builders Corporation reported in 2009 (4) CHN 252 and [Niraj Kumar Bohra Vs. Union of India \(UOI\)](#), the challenges were made at the threshold which is not the case here.

18. Hence, he submitted that there is no substance in the contention of the Appellant regarding corum non-judice. Therefore, he further contended that the award which has been passed by the learned Arbitrator/Umpire is not without jurisdiction and is not a nullity and accordingly he submitted that the decision which has been cited by Mr. Roy, learned Advocate in this matter cannot have a help to his client. In support of applicability of clause 17(3) of the General Conditions of Contract Mr. Roy submitted that the provisions of Clauses 17(3) and 16(2) of the General Conditions of Contract have already been considered by two several Bench of this Hon"ble Court in A.P.O. No. 19 of 2000 (Board of Trustees for the Port of Calcutta v. Mahalaxmi Construction) reported in 2002 (1) CHN 288 and Union of India v. Pam Development (supra).

19. He further contended that the decisions cited on behalf of the Appellant are not applicable in the facts and circumstances of this case. He further contended that the decision which has been cited and reported in 2006 (4) Arb. LR 385, in the said decision Clause 17.3 or clause 16.2 was not considered by the Court. The power of the Arbitrator to award interest has been upheld by the Hon"ble Supreme Court in the case of Rajasthan v. Ferro Concrete Construction reported in 2009 (3) Arb LR 140 , where the Hon"ble Supreme Court reduced the rate of interest from 18% to 10%. Such reduction of interest was made under the provisions of Article 142 of the Constitution of India. He further submitted that it has been observed by the Hon"ble Supreme Court of India in the case of [Indian Bank Vs. ABS Marine Products Pvt. Ltd.,](#) , [Indian Bank Vs. ABS Marine Products Pvt. Ltd.,](#) that the High Court should thereafter, be careful to ascertain and follow the ratio decidendi and not the relief given on the special facts exercising power under Article 142 (para 26).

20. In these circumstances, he submitted that the appeal should be dismissed.

21. It is submitted that since the reference was presided over by a retired Judge and not by a Gazetted Officer, the arbitration proceedings should be completed and the award should be set aside as void. The fact also tried to be placed before us that an application was made by the Railways at the 39th sitting of the reference on 21st August, 2002 for amendment of the counter-statement of facts to challenge the very authority of the Arbitrator to take up the reference. But it appears to us that such plea was taken by the Railways after two years and further filing their counter-claim and sought an adjudication and further invited the arbitrator to decide the claim of the Railways. The said application was filed at the time of conclusion of the argument of the learned Advocate appearing on behalf of the Respondent before the Arbitrator.

22. From the facts it appears that such application for appointment was filed only in terms of an order passed by the Single Judge of this Court on 5th July, 2002 in AP No. 397 of 1997 (Union of India v. Krishna Kumar) which was set aside subsequently by the appellate order dated 23rd February, 2004 in APOT No. 557 of 2002 and the Hon'ble Supreme Court resorted the order of the Single Judge on 19th July, 2007 in Civil Appeal No. 6324 of 2004 (Union of India v. Krishna Kumar) and on the basis of the said judgment the learned Advocate submitted that the assertion has been made on behalf of his claim that the award under challenge in the present proceedings was void.

23. The Hon'ble Apex Court upheld the judgment of the Single Judge and agreed with the conclusion of the Single Judge and describe as the well reasoned judgment since the Apex Court noticed the change in the interpretation of section 11 of the 1996 Act which is reported in [S.B.P. and Co. Vs. Patel Engineering Ltd. and Another](#), . The Hon'ble Supreme Court relied on a passage from a judgment reported in 2004 (10) SCC 504 (Union of India and Anr. v. M.P. Gupta) to hold that since there was an express provision in the agreement for appointment of a gazetted railway officer, no other person could be appointed as an Arbitrator.

24. In the case of A. Mohammed Yunus (Dead) by LRS v. Food Corporation of India and Anr.) where the Supreme Court noticed that the award was made by an arbitrator and was not appointed in accordance with the arbitration agreement. In the backdrop of the said facts Supreme Court upheld the order of the Kerala High Court on the ground that the reference was quorum non-judice. Reliance was also placed at [Kiran Singh and Others Vs. Chaman Paswan and Others](#), and it appears that in those decisions the Hon'ble Supreme Court endorsed the views that since by operation of law the Trial Court had no authority to interfere the suit, the decree passed was a nullity.

25. The points urged before us by Mr. R.N. Das, learned Advocate appearing on behalf of the Appellant are that Award is void ab initio and is a nullity since the arbitrator/umpire had no jurisdiction to deal with the matter. It is also the case of Mr. R.N. Das that if the award is a nullity can be challenged at any stage and his third contention was that the claims are not maintainable in view of the Clauses mentioned in the General Conditions of Contract being 17(3) and 16(2). He also relied upon Clause 64(3)(a)(iii) which is necessary for us to consider the said Clause at this stage.

26. Mr. R.N. Das's first contention was that in terms of Clause 64(3)(a)(iii) the reference was presided over by a retired Judge and not by a gazetted Railway Officer. Therefore, the award should be set aside as void.

27. From the facts it appears that the contractor instituted proceedings under sections 5, 8, 11 & 12 of the Arbitration Act, 1940 before Howrah Court which were transferred to this Court. An umpire was appointed on 4th February, 2000 with a

direction to enter upon the reference within a period of fortnight from the date of forwarding the matter to him for such purpose. The arbitrators declined the appointment followed by a modification order passed by the Court on 13th March, 2000 by replacing the name of the umpire in the order dated 4th February, 2000. Subsequently, the contractor applied for clarification of the order dated 4th February, 2000 which was disposed of by an order dated 30th November, 2000 by His Lordships Lala, J. His Lordship was pleased to pass the following order:

The Court: This is an application of the Petitioner for modification and/ or clarification of the order dated 4th February, 2000 wherein a direction was given by this Court as follows:

The umpire will enter upon the reference within a period of fortnight from the date of forwarding the matter to him for such purpose.

28. Mr. Das relied upon the decision in the case of Union of India v. Krishna Kumar in Civil Appeal No. 6324 of 2004. It was decided on 2007 and submitted that the said decision gives a right to the Appellant to content that the award under challenge in the present proceedings is void. It appears to us that the Hon"ble Single Judge duly noted the decision of Tarapore & Company v. Cochin Shipyard Ltd., Cochin and Anr. (supra) where the Hon"ble Supreme Court held that when a party participated in the arbitration proceedings of a decision, it cannot therefore, now be permitted to turn round and contend to the contrary.

29. He also relied upon the decision in the case of Prasun Roy v. Calcutta Metropolitan Development Authority and Anr., where the Hon"ble Apex Court held that if there was long participation, it made no difference whether the authority of the arbitrator was questioned before or after making the award. The Division Bench in the unreported judgment relied on paragraph 8 of the Kerala case and the fact that the jurisdiction of the Court in appointing the arbitrator had been questioned. The following passage from the Kerala judgment was referred to by the Division Bench to interpret the Supreme Court judgment in the appeal which arose therefrom:

As objection has been filed by the Appellants questioning the very jurisdiction of the Court in appointing the Arbitrator it is not possible to hold that the Appellants took part in the proceedings before the Arbitrator on the assumption that proceedings were before a competent authority. That would not be the position if the Appellant did not raise objection to the jurisdiction of the Court in appointing the Arbitrator. It is settled position that if a party takes part in the proceedings before the Arbitrator on the assumption that the proceedings were before a Arbitrator on the-assumption that the proceedings were before a competent authority he cannot later turn around and contend that the whole of the proceedings were coram non-judice.

30. He also relied upon a decision in the case of [Inder Sain Mittal Vs. Housing Board, Haryana and Others](#), where the Hon"ble Supreme Court restored the awards on the

following reasoning:

12. In view of the foregoing discussions, with reference to the provisions of the Act, we conclude thus:

i) Grounds of objection u/s 30 of the Act to the reference made, with or without intervention of the Court, arbitration proceedings and the award can be classified into two categories viz. one emanating from agreement and the other from law.

ii) In case the ground of attack flows from agreement between the parties which would undoubtedly be a lawful may set it right at the initial stage or even subsequently in case the party objecting has not participated in the proceedings or participated under protest. But if a party acquiesced to the invalidity by his conduct by participating in the proceedings and taking a chance therein cannot be allowed to turn round after the award goes against him and is estopped from challenging validity or otherwise of reference, arbitration proceedings and/or award inasmuch as right of such a party to take objection is defeated.

iii) Where ground is based upon breach of mandatory provision of law, a party cannot be estopped from raising the same in his objection to the award even after he participated in the arbitration proceedings in view of the well-settled maxim that there is no estoppel against statute.

iv) If, however, basis for ground of attack is violation of such a provision of law which is not mandatory but directory and raised at the initial stage, the illegality, in appropriate case, may be set right, but in such an eventuality if a party participated in the proceedings without any protest, he would be precluded from raising the point in the objection after making of the award.

13. In the case on hand, it cannot be said that continuance of the proceedings and rendering of awards therein by the Arbitrator after his transfer was in disregard of any provision of law much less mandatory one but at the highest, in breach of agreement. Therefore, by their conduct by participating in the arbitration proceedings without any protest the parties would be deemed to have waived their right to challenge validity of the proceedings and the awards, consequently, the objections taken to this effect did not merit any consideration and the High Court was not justified in allowing the same and setting aside the award.

31. In the case of [Balvant N. Viswamitra and Others Vs. Yadav Sadashiv Mule \(dead\) through Lrs. and Others](#), where the Hon"ble Supreme Court approved an earlier judgment and held as follows:

14. Suffice it to say that recently a Bench of two Judges of this Court has considered the distinction between null and void decree and illegal decree in [Rafique Bibi \(D\) by Lrs. Vs. Sayed Waliuddin \(D\) by Lrs. and Others](#), One of us (R.C. Lahoti, J., as His Lordship then was), quoting with approval the law laid down in [Vasudev Dhanjibhai Modi Vs. Rajabhai Abdul Rehman and Others](#), stated: (SCC pp.291-92, paras 6-8)

6. What is "void" has to be clearly understood. A decree can be said to be without jurisdiction, and hence a nullity, if the Court passing the decree has usurped a jurisdiction which it did not have; a mere wrong exercise of jurisdiction does not result in a nullity. The lack of jurisdiction in the Court passing the decree must be patent on its face in order to enable the Executing Court to take cognizance of such a nullity based on want of jurisdiction, else the normal rule that an Executing Court cannot go behind the decree must prevail.

7. Two things must be clearly borne in mind. Firstly, "the Court will invalidate an order only if the right remedy is sought by the right person in the right proceedings and circumstances. The order may be "a nullity" and "void" but these terms have no absolute sense: their meaning is relative, depending upon the Court's willingness to grant relief in any particular situation. If this principle of illegal relativity is borne in mind, the law can be made to operate justly and reasonably in cases where the doctrine of ultra vires, rigidly applied, would produce unacceptable results." (administrative Law, Wade and Forsyth, 8th Edn., 2000, p. 308) Secondly, there is a distinction between mere administrative orders and the decrees of Courts, especially a Superior Court. The order of a superior Court such as the High Court, must always be obeyed no matter what flaws it may be thought to contain. Thus a party who disobeys a High Court injunction is punishable for Contempt of Court even though it was granted in proceedings deemed to have been irrevocably abandoned owing to the expiry of a time-limit", (ibid.p. 312)

8. A distinction exists between a decree passed by a Court having no jurisdiction and consequently being a nullity and not executable and a decree of the Court which is merely illegal or not passed in accordance with the procedure laid down by law. A decree suffering from illegality or irregularity of procedure, cannot be termed in executable by the Executing Court, the remedy of a person aggrieved by such a decree is to have it set aside in a duly constituted legal proceedings or by a superior Court failing which he must obey the command of the decree. A decree passed by a Court of competent jurisdiction cannot be denuded of its efficacy by any collateral attack or in incidental proceedings.

32. The issue that arises is whether the principle of coram non-judice would apply to the facts of this case.

33. It appears to us that the Hon"ble First Court has duly dealt with the matter and subsequently recorded the facts that the Railways had a chance to oppose the initial appointment in the proceedings under sections 5, 8, 11 and 12 of the 1940 Act. The Railways did not take any objection on that point of time. The Court appointed an Arbitrator who declined and subsequently further order was passed.

34. It would be evident from the fact that thrice the matter came up before the Court but the Railways at no point of time objected to the order so passed by the Court nor preferred any appeal from the order passed by the Court. Furthermore,

the application which was placed before the Arbitrator was absolutely at the later stage and further the said was not pressed. Therefore, at this stage, in our opinion, the Hon"ble First Court correctly held as follows:

And it is such finality of the order of reference, unchallenged as it remained, that denudes the argument now made of much of its luster.

35. It further appears that the point of waiver is also come to play its role since the facts shows that at no point of time there was any intention on the part of the Railways during the pendency of the proceedings to challenge the authority of the said forum.

36. We have noticed that in the case of Mohammed Yunus and Krishna Kumar Case the objections were taken as to the authority of the Arbitrator at the earlier stage. Therefore, after analyzing the facts of the case and in our opinion the Hon"ble First Court correctly held as follows:

In the present case, there is unequivocal submission of the Railways in the authority of the Arbitrator and the unreserved invitation to the Arbitrator to take up their counter-claim. One ought to infer from the Railways" conduct that there was conscious, intentional relinquishment of the Railways" right under the relevant clause and there is implicit consent to the authority upon Railways" unequivocal submission thereto.

Arbitration jurisdiction is consensual; the authority of a Court to receive an action, is not. A Court derives its authority from the statute and its jurisdiction depends on the subject-matter and territorial and pecuniary considerations. Parties cannot confer jurisdiction on a Court by consent. But parties jurisdiction to the Arbitrator and that is recognized by statute. The Railways here consented to the reference being taken up by the arbitrator. The clause that the railways rely on was there at the beginning and was not introduced by the Krishna Kuamr order of July 5, 2002 for the Railways to suddenly wake up to. By such time, at the 39th sitting and two years into the reference, it was no longer the original clause that gave the arbitrator the authority, it was the Railways" consent to and acquiescence therein, that did.

37. We have further noticed that His Lordship correctly held as follows:

Railways never followed the provisions of General Conditions of Contract for granting extension of time beyond the contract period by executing Supplementary Agreement under clause 17(3) of the General Conditions of Contract.

38. His Lordship further noticed that the application which was filed before the Arbitrator was not pressed since a stay was granted in respect of the Krishna Kumar case (supra) but even then that cannot be said to be a bar on the part of the party to challenge the authority of the Arbitrator. Therefore, in our opinion the Railways abundant their rights which would be evident from the said facts. The conduct and the facts of this case would show that the Railways cannot get any help in the facts

and circumstances of this case and in our opinion His Lordship correctly held that the challenge as to the authority of the Arbitrators made by the Appellant fail.

39. The other points which have been tried to be urged before us on behalf of the Railways that the award was made in respect of the excepted matter and the Arbitrator erred in granting interest. The point has been urged before us that the Arbitrator acted beyond his jurisdiction to receive a claim on excepted matter. It appears from the facts that the arbitrator has found as a matter of fact on the appreciation of the evidence that Railways never followed the provisions of General Conditions of Contract for granting extension of time beyond the contract period by executing Supplementary Agreement under clause 17(3) of the General Conditions of Contract.

40. We have further noticed that there is no arbitrariness about the decision making process followed by the learned Arbitrator in respect of the heads of claim which have been accepted by the learned Arbitrator. The learned Arbitrator duly considered the maintainability of the claims and assessed the quantum on the basis of the material placed before him.

41. It further appears to us that the learned Arbitrator duly justified the award of interest on the basis of the decision reported in 2001 (1) SCC 758 (T.P. George v. State of Kerala and Anr.) the Hon"ble Supreme Court in the said decision recognized the authority of the learned Arbitrator to award interest at all four stages, (i) from the time of accrual of cause of action till filing of the arbitration proceedings; (ii) during the pendency of the proceedings before the learned Arbitrator; (iii) future interest arising between the date of the award and the date of the decree and (iv) interest from the date of the decree till realization of the award.

42. The Railways relied upon Clause 16(2) of the General Conditions of the Contract which is set out hereunder:

16(2)B Interest on amounts. No interest will be payable upon the earnest money or the security deposit or amounts payable to the Contractor under the contract, but Government Securities deposited in terms of Sub-clause (1) of this clause will be repayable with interest accrued thereon.

Interest on the said Government Security will be drawn by the Railway Administration and credited to the Contractor and the Contractor shall not be entitled to claim any other sum by way of interest or profit on the said Security Deposit than the amount actually drawn by the Railway Administration from the Government.

43. It appears that after analyzing the decisions cited before us that the interest in the present case, the interest prohibition clause admittedly was incorporated in the GCC, but not in the Arbitration Clause forming the Arbitration Contract. In our opinion, a plain reading of the contract does not reflect intention of the parties to

denude the power of the Arbitrator to award interest. Clause 16 (2) of the GCC has not been included in the list of excepted matters as provided in Clause 63 thereof. It has also not been argued before us the issue of award of interest came within excepted matters. Accordingly, we are of the view that the interest exclusion clause should be held in the present case to be an embargo on the power of the Appellant or its officers to award interest, but the Arbitrator's power to award interest has not been curbed in the agreement.

44. Accordingly, we find that there is no illegality in awarding interest by the learned Arbitrator.

45. For the reasons stated herein, we affirm the order so passed by the Hon"ble First Court. Hence, we dismiss this appeal.

Xerox certified copy of this order, if applied for, be supplied to the parties on usual undertakings.